

ARSON VICTIMS:

SUGGESTIONS
FOR A
SYSTEM
RESPONSE



Prepared by The American Bar Association Section of Criminal Justice
for The Federal Emergency Management Agency

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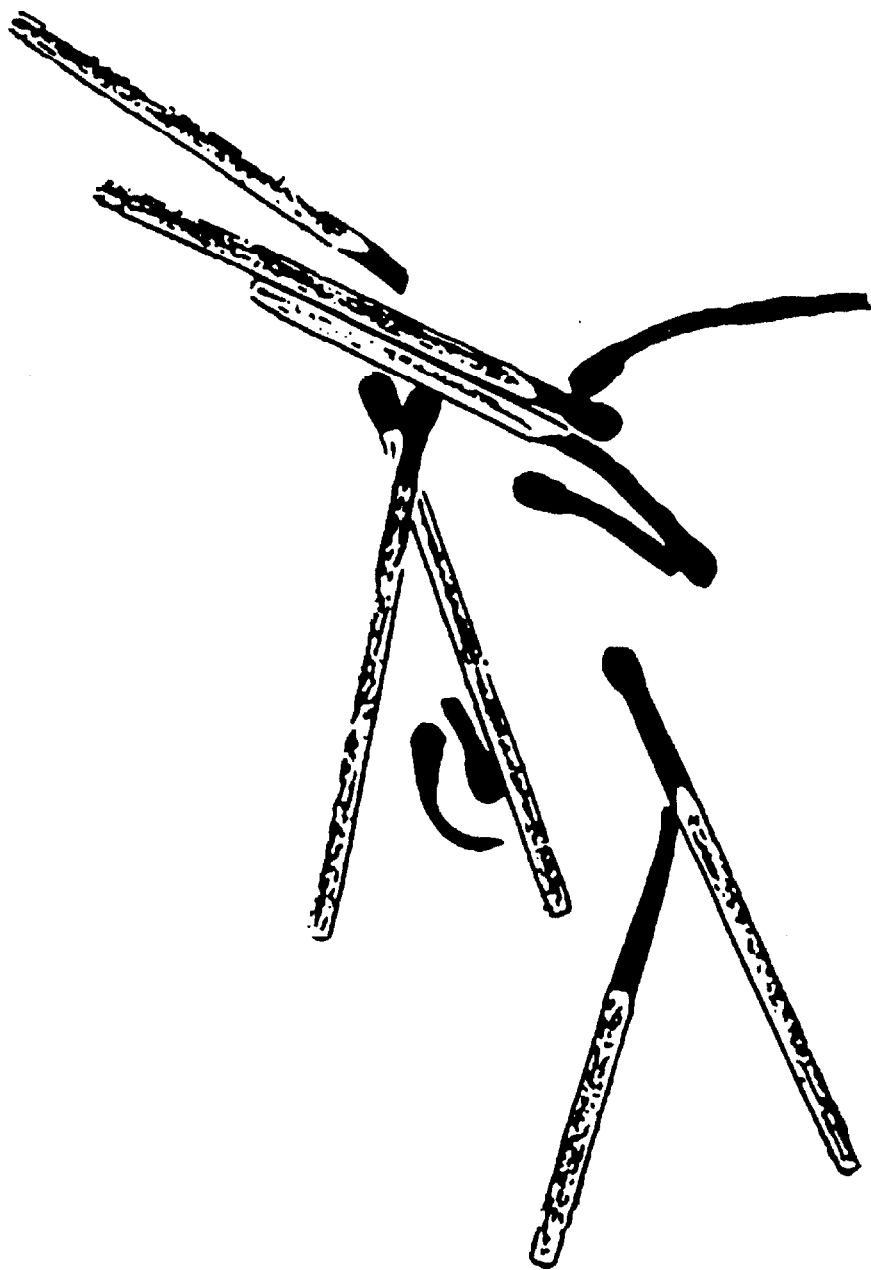
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TABLE OF CONTENTS

	PAGE
Introduction	1
Arson Victims	3
The Crime Scene	9
The Investigation	13
The Arrest and Pretrial Stages	17
The Trial	21
Sentencing	21
Corrections	23
Policy Review	25
Directories:	
State Crime Victim Compensation Boards.....	27
State Crime Victim Assistance Offices.....	29



INTRODUCTION

Arson has always been a particularly challenging crime to fire service providers, police and prosecutors. Its work demands are high and unpleasant, and the success rates low. However, the decade of the 1980's saw a vigorous dedication of resources and energies toward the investigation and prosecution of arson cases. Commendable progress has been credited not only to forensic advances but also to unprecedented cooperation and coordination between police, fire service officials, prosecutors, and other community groups, often through formal arson task forces.

The decade of the 1980's also ushered in an era of unprecedented attention to crime victims. Beginning with the enactment of the first "bill of rights" for crime victims in Wisconsin in 1980 and continuing through today's movement to incorporate victim rights into the United States Constitution, efforts to address the concerns and needs of crime victims have been widespread and wide-ranging. For example, virtually every state has improved protections against victim intimidation, provided for increased use of victim restitution, allowed for use of victim impact information at sentencing, and institutionalized and provided funding for programs to provide victim services and victim compensation.

This booklet seeks to link or reinforce the efforts of those who investigate and prosecute arson cases with the needs and rights of those who are the victims of arson - particularly victims of residential arson. It is addressed to police, fire officials, prosecutors and victim/witness coordinators who are in frequent contact with arson victims, but who may not fully recognize the potential implications of that contact for either the victim or the system. Little of the information and few of the suggestions it contains are new. In fact, a number of jurisdictions have already established internal and cooperative programs to capitalize on the tremendous mutual assistance which arson victims and law enforcement/fire service providers can give to each other. The authors applaud these existing efforts, and draw upon them in describing realistic assistance programs and the mutual benefits likely to result from such programs. Their hope is that this booklet will encourage similar efforts in other places which have not yet directly addressed the issue of arson victims, and provide guidance to jurisdictions wishing to reassess current policies and programs in light of recent victim-oriented reforms.

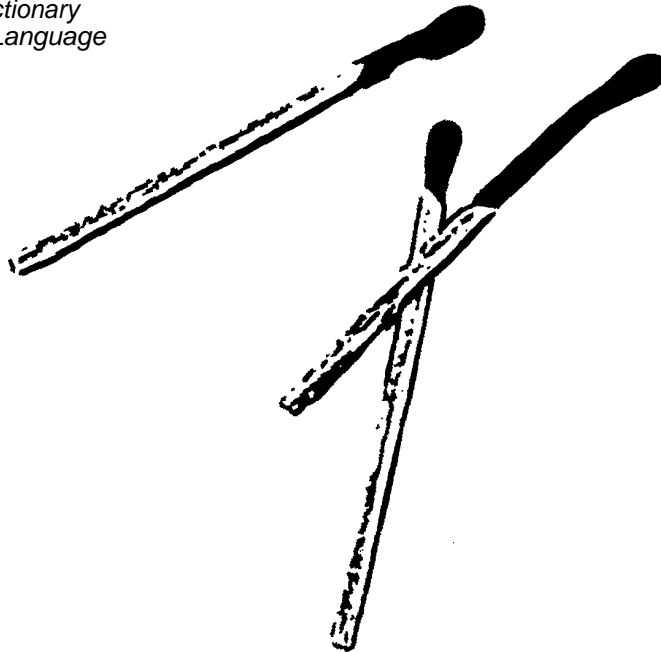
ARSON:

"the malicious burning
of another's house or property"

VICTIM:

"a person who suffers from
a destructive or injurious
action or agency"

*Webster's Encyclopedic
Unabridged Dictionary
of the English Language*



ARSON VICTIMS

Substantial publicity about arson for insurance or tax motives often leaves the impression that in arson cases the “victim” and the perpetrator are one. In fact, however, arson affects countless numbers of innocent victims, including owners, employees, shareholders, and occupants of private or public buildings and conveyances that are “torched” by others for any of a variety of reasons. Its impact varies, of course, depending on its nature and its victims. Residential arson - in which victims’ homes and property are deliberately and maliciously set on fire - often has particularly personal, direct, immediate and emotionally devastating effects. Mutual benefits are bound to accrue when officials responsible for investigating and prosecuting arson cases and officials responsible for assisting crime victims better understand the impact of arson on its victims and take measures to ameliorate it. This publication is intended to further those ends by providing some factual background information and concrete suggestions for various officials and others whose work brings them into contact with arson victims, particularly residential arson victims.

■ **Residential arsons constitute a considerable proportion of all arsons, resulting in death, injury, and economic loss to its victims.**

According to the Federal Bureau of Investigation, there were almost 95,000 confirmed arson offenses reported to law enforcement agencies in 1995.’

Nearly a third involved residential structures.² The National Fire Protection Association estimates an annual average of 106,500 structural fires of incendiary origin between 1990 and 1994, including 59,500 residential structure fires. Average annual civilian injuries from these residential structure fires number 2,110 and civilian deaths 650. Economic losses from residential structure fires average nearly \$913 million a year.³ Firefighters may also suffer injury and death while fighting residential arsons.

■ **All types of residences are potential arson targets.**

In 1995, seventy percent of the residential structures targeted were “single occupancy” structures, e.g., houses, townhouses, duplexes; the others were structures such as apartments, hotels, dormitories, and boarding houses⁴ Eighty-percent of the residential structures were in use at the time of the arson.⁵

■ **There is no “typical” residential arson victim.**

Arson can affect anyone, regardless of race, income, age or gender. While some arson victims are targeted, many are “third party” or “incidental” victims - for example, when an apartment or home catches fire from a neighboring apartment or building that was the direct target.

■ **Arson is committed for a variety of motives.**

Arson motives are either rational or irrational.” Rational motives involve a definable objective clearly and logically linked to the fire. They may be either economic or non-economic.

Economic gain is a common motive for arson, perhaps more often but certainly not exclusively for non-residential arsons. For the individual who actually sets the fire, the gain may be in the form of a fee for service. The individual paying for this service may have insurance or tax-loss objectives.

Non-economic motives also underlie many instances of arson. These include spite or grudge against an owner, landlord or occupant; covering evidence of another crime; and commission of another crime (e.g., homicide). On occasion, a deranged or drunken individual may “torch” a restaurant, bar or even a residence because of some real or imagined slight that took place on the premises. Some terrorists resort to arson by using incendiary explosive devices. Juvenile vandals, as well as some adults, often commit arson for the “thrill of it.” (Juveniles under 18 years of age account for nearly half of the arrests for arson and over a third of the arrests for residential arson.)⁷ Gang members may be responsible for the burning of opposing gang members’ residences, either as intentional arsons or as the result of Molotov cocktails used as inexpensive weapons. In some instances,

arson is a form of domestic violence by one spouse or former spouse against another.

Irrational motives include pyromania, ritual purification, and sociopathic behavior.

■ **Arson victims have many of the same problems of other crime victims.**

Arson can result in physical and psychological injuries, death, extensive property loss or damage, and loss of earnings. (Unlike most other victims, however, arson victims may lose long-time family homes and be forced to leave their communities.) In addition, arson victims as well as other victims in jurisdictions without comprehensive victim services may face “secondary victimization” from their contact with the criminal justice system.

■ **Theoretically, the needs of arson victims may be addressed through the same agencies and reforms which assist other crime victims.**

In the past several decades, there have been considerable advances to improve the plight of crime victims. For example:

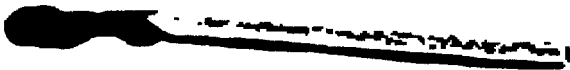
- private victim assistance projects (e.g., church, community, social service programs);
- public victim/witness assistance projects (e.g., police, prosecutor or court-sponsored programs);

- public victim compensation boards or agencies (all states and the District of Columbia have programs to provide some financial assistance to victims of violent crimes, primarily for injuries and loss of income);
- state constitutional amendments or legislation requiring certain notices and information to crime victims about criminal justice proceedings, and providing them the right to participate in certain proceedings;
- increased use of victim restitution as a sentence or condition of probation;
- use of "victim impact" statements in pre-sentence reports and victim allocation at sentencing; and
- litigation on behalf of victims, particularly lawsuits against third parties whose negligence caused or failed to prevent victimization.

Arson victims, of course, may also benefit from programs which assist other burn victims in dealing with their injuries, such as the Illinois Fire Safety Alliance Burn Camp for children and teenagers.

■ **In fact, however, the nature of the crime and the circumstances of the victim often make it more difficult to address arson victims' needs.**

- Aside from coping with medical emergencies, residential arson victims are usually immediately and primarily concerned with securing safe shelter for themselves and their families. They may leave the scene of the crime (their home), without leaving a forwarding address which might otherwise be used by victim assistance agencies or investigative agencies.
- Once a building has been burned, there is a paramount need to secure it or to remove its contents to ensure that further victimization (e.g., looting) or damage (e.g., from the weather) does not occur. The victim cannot do this if he or she is seriously injured or incapacitated, or cannot be located. Many fire departments and police departments do not see this as their responsibility and victim assistance projects generally lack the authority or means of assuming it.



- Arson victims may not even be aware that the fire was intentionally set. (This is particularly true when the building in question is a large, multi-family dwelling.) It is often at least several days and sometimes much longer before an official determination of arson is made. Consequently, such individuals may not view themselves as crime victims and might not think to contact victim assistance agencies or crime compensation programs even in the unlikely event they are aware of their existence.
- Victims who are unable to provide information about the crime are rarely subpoenaed as state witnesses and consequently are not as likely to be offered assistance from prosecutor or court victim /witness assistance projects. Arson victims frequently fall into this category of victim.
- Arson victims may, rightly or wrongly, suspect that they have been the target of a grudge or revenge. Accordingly, they may be reluctant to come forth to help investigators or to request assistance, fearing that such action may increase the possibility of implicating themselves either directly or indirectly with the crime and/or the perpetrator. This fear is not irrational because, in fact, arson victims are often suspects in arson cases.
- Victims who suspect that the arson was a form of domestic violence may take refuge in domestic violence shelters where their identity will be protected, making them particularly difficult to locate. Domestic violence victims often have justified fears that cooperation with the authorities may result in further retaliation against them or their children.
- Arson victims who do wish to report information about the crime may be confused as to whether the police department or fire department has jurisdiction over the investigation; initial frustrations resulting from this confusion may discourage the victim from following through.
- Arson causes devastating personal property damage. In 1995, the average monetary loss for arson was \$15,856 in single-occupancy residences and \$12,560 in other residences.* Victims often go through a lengthy, tedious accounting of their personal belongings in order to recover limited monetary compensation. State and federally funded victim compensation programs generally limit coverage to medical expenses and loss of income due to physical injuries.' While real property may be insured by the landlord or owner, the contents of individual apartments or rooms are frequently uninsured, even when occupied by middle-income tenants.

- Offender restitution to the victim is increasingly being imposed by the courts as a sentence or as a condition of probation. However, only about a quarter of residential arson cases result in arrest¹⁰ and many of these “cleared” cases do not result in convictions.

Even when convicted and ordered by the court to pay restitution, many arsonists - as other offenders - are unable or unwilling to comply. The high rate of residential arsons by juveniles exacerbates this problem. As noted above, over a third of the arrests for residential arson are of juveniles under 18 years of age. Some states have tried to increase restitution for victims of juveniles by holding their parents responsible for the restitution. However, there may be statutory limits to parental restitution. For example, in Alabama, the parents of a juvenile offender are liable only for actual damages up to \$1,000.¹¹ The liability of parents in Pennsylvania is set at a maximum of \$2,500.¹² On the other hand, several states have recently increased or eliminated previously set maximum limits. In Arizona, the liability of parents was increased from \$2,500 to \$10,000 in 1994¹³ and in Maryland, the liability limit was increased from \$5,000 to \$10,000 in 1995.¹⁴ In 1987 New Jersey deleted the provision that “no recovery could be had in excess of \$250.00” and set no limit in its place.¹⁵

Of course, when juveniles burn their own parents’ homes, the concept of parental restitution is largely irrelevant since the parents, as victims, will already bear the brunt of the costs.

- State legislatures and individual judges are increasingly allowing or requiring “victim impact” information to be incorporated into the probation department’s pre-sentence report or allowing victims to speak at sentencing to ensure that the sentencing body is aware of the consequences of the crime from the victim’s perspective. Again, low arrest and conviction rates in arson cases usually preclude arson victims from using this avenue to seek financial restitution for losses associated with the crime.



THE CRIME SCENE

Once the immediate danger from the fire is under control and emergency law enforcement needs are met, previously-designated officials on the scene should:

- attend to the victim's immediate well-being,
- to the extent feasible or appropriate, elicit immediate victim cooperation, and
- lay the groundwork for future cooperation.

These goals are generally interdependent. To achieve them, an explicit *advance* understanding between the fire and police departments about primary responsibility for various aspects of on-the-scene victim contact is important. This will eliminate much confusion, duplicity of effort, and failure to deal adequately with victims who would otherwise "fall through the cracks" of the two agencies' uncoordinated efforts. The best division of responsibility in this first contact with the victim may not be as obvious as in later stages when primary investigative authority has been determined. The important point, however, is not so much who does what but that responsibilities be assigned. (It has been suggested that the battalion chief or senior officer may be in a better position than the line officer or service provider to make the initial contact with the victim.)

Tending to the Victim's Well-Being

Of immediate concern, of course, is the physical condition of the victim. In emergency situations, it may involve first aid and, if necessary, providing transportation or seeing that transportation is provided to take the victim to the hospital. When there is no emergency, the victim may still require some medical attention and should be referred to one or several appropriate medical facilities.

In addition to being left at least temporarily homeless, the arson victim is often unable to enter his or her dwelling to retrieve money, checkbooks, clothing, etc. Referrals to sources of emergency financial and welfare assistance as well as emergency shelters should therefore be provided. These might include local victim assistance agencies, the welfare office, Salvation Army, YMCA, Red Cross, church or other community groups suggested by the Department of Social Services.

In recognition that he or she may have no further contact with the system for any of a number of reasons, addresses and telephone numbers of general assistance programs and crime victim compensation agencies should be made available to the victim.

Finally, a name and telephone number of a contact within the criminal justice system is extremely important in case the victim needs or wishes to provide additional information.

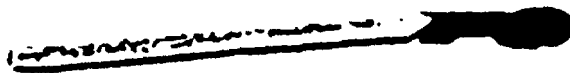
All of the above referrals may be pre-printed on a small wallet-sized card and, in most instances, simply handed to the victim at the scene of the crime. The card probably should be developed through the mutual effort of police and fire agencies, and distributed by the on-scene liaison(s). Additional cards should be available at hospitals, shelters, etc. where the victim may be taken immediately after the fire.

Eliciting Victim Cooperation

Immediate:

From the victim's perspective, the period immediately following the crime is generally not the best time for official interviews. Victims are usually emotionally upset and preoccupied with their personal situation. Nevertheless, law enforcement and fire service investigators may need to ask them some questions that are best answered in the minutes and hours after the fire, while memories are still fresh and the prospects for identification and apprehension are greatest. In doing so, investigators need to:

- be aware that their own immediate concerns and the immediate concerns of the victim - while both legitimate - are probably not the same;
- coordinate efforts within and among agencies so as to preclude unnecessary or repetitive questioning;
- recognize that the victim's current willingness to cooperate may be subject to pressures from family, gang members, or others after the initial interview; and
- remember that the victim's perception of his or her treatment at the crime scene may well determine the degree of future cooperation.



For the future:

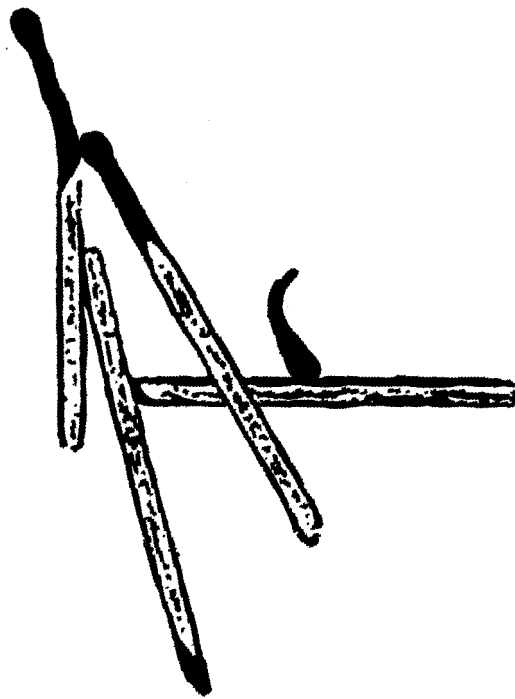
Obviously, if the investigative agency does not know who the victims are or how to locate them, it will not even be able to request their cooperation in the future. Therefore a system for identifying and tracking arson victims who are forced to relocate is essential from an official viewpoint. From the victim's viewpoint, a tracking system may help ensure their safety, and will enable the investigators to keep them advised of major events in the case. An explanation of such benefits prior to requesting specific tracking information is likely to result in victims' immediate cooperation.

The elements of an identification and tracking system might include:

- recording the names of all victims (whether or not present at the time of the fire) and their permanent or temporary addresses, plus a limited amount of identifying information (e.g., place of employment);
- recording the name and address of the victim's closest friend or relative, ideally within the nearby geographical area, who will know where the victim can be located if needed by the investigative agency;
- recording the name of the victim's insurance company and, if possible, the insurance agent;
- providing the victim and other appropriate persons with the name, address and phone number of a contact person at the police department or fire department and at a local victim service agency; and

- giving the victim (or a friend, family member, etc.) a self-addressed prepaid postcard for use in notifying the police/fire department of a new permanent address.

In addition, some immediate record should be made to identify unavailable occupants of rooms or apartments destroyed or damaged by the fire. This will facilitate later efforts to ensure that all victims have been identified. Extensive photographs or videotapes should be taken to record damaged rooms, buildings or personal property, not only for evidentiary reasons but also for possible use by the victim in filing insurance claims or in seeking restitution from offenders who are apprehended and convicted. (Such information generally is not useful in collecting payment from state crime victim compensation programs since most state statutes do not allow compensation for property loss or damage.)



THE INVESTIGATION

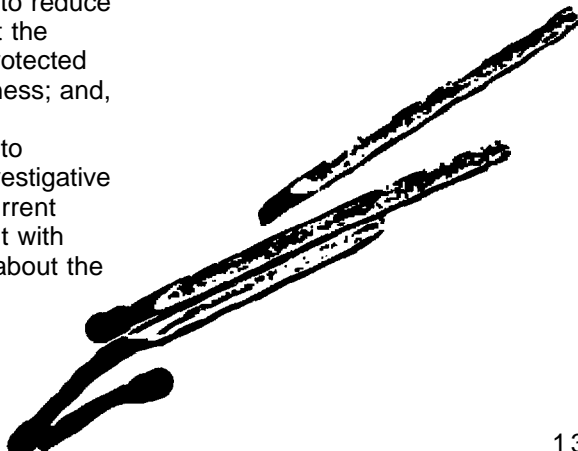
Once a fire appears to be of suspicious origin, an investigation will be undertaken. In some jurisdictions, the police have primary responsibility for investigating arson cases; in other jurisdictions this falls under the authority of the fire department. Still elsewhere, investigations are joint efforts. Regardless of how the responsibility is split, cooperation between the agencies is extremely important.

Investigative Agency

During the investigation, the primary investigative agency will probably be in touch with the arson victim for several reasons:

- to verify information obtained at the scene of the crime;
- to ascertain whether the victim has additional information which might be helpful to the investigators;
- to determine whether the victim appears to have been intimidated and, if so, to take steps to reduce such intimidation so that the victim will be properly protected and make a reliable witness; and,
- to encourage the victim to continue to keep the investigative agency informed of a current address and to provide it with any further information about the case that might become available

When dealing with the victim at this stage, the investigator will probably find the victim still upset but less agitated than at the scene of the crime; therefore, it may be helpful to reiterate some of the information and advice previously provided, such as that regarding crime victim compensation and assistance. Victims filing insurance claims may need the case number and the investigator's name. It is also extremely important at this stage to give the victim some idea of what the criminal justice system may expect from the victim and what the victim may realistically expect in return.



For example, the investigator may discuss:

- the course and result of the investigation to date;
- the importance of the individual victim's testimony to the case;
- possible remedies for victim intimidation, such as increased police protection, a temporary restraining order, or formal criminal charges against those who may be intimidating the victim;
- the possibility of the victim's consulting with the prosecutor prior to decisions about whether or not to prosecute, to pursue a disposition by plea, or to dismiss the charges;
- the possibility of a "victim impact" statement at the plea negotiation or sentencing stage;
- the possibility of financial restitution if the offender is convicted and financially able to repay the victim; and
- the possibility of litigation against negligent third parties who may have had a duty to prevent the victimization.

Providing such information at this early stage should not be thought of as "premature," as it may provide the incentive needed by the victim to participate as a willing witness. Investigators should be cautioned, however, to be wary of false testimony by vindictive victims or by non-victims eager to "cash in" on potential restitution. They also should avoid raising unrealistic expectations or making promises they are not authorized or in the position to keep.

Non-Investigative Agency

There is no active role that the non-investigative agency (police or fire department) should take during this stage other than to be helpful to any victim who might call with or for information.

If the call concerns financial, medical, or other needs not directly related to the investigation, the caller should be referred to an appropriate source of help, whether it be a victim assistance project, the crime victim compensation agency, or a community group such as the Salvation Army or Red Cross.

If the call is directly related to the investigation, one could reasonably expect that the non-investigative agency would at least have the name and number of a specific person in the investigating agency which could be given to the victim rather than just replying that "we don't investigate fires - call the police (or fire) department." In addition, the non-investigating agency could take the name, address and phone number of the caller and pass that information directly on to the investigating agency in case the caller, for whatever reason, does not follow through to contact the investigators.

Victim Assistance Programs

There are several types of victim assistance agencies or programs. Those operating out of prosecutors' offices or the courts usually do not come into play at this initial stage of the investigation, since a formal case is not yet established. However, some of the more progressive prosecutor-based programs review police reports on a daily basis to improve their outreach capabilities. A few (such as Milwaukee) also have crisis response units.

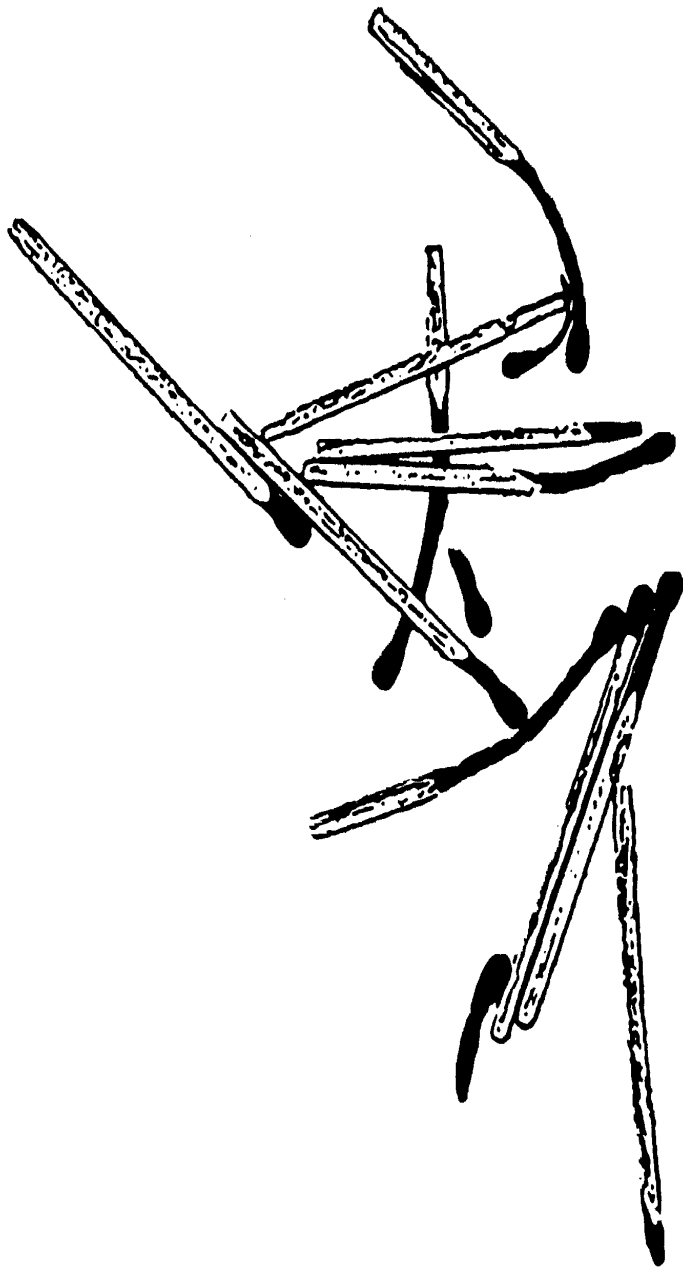
Some police departments operate victim assistance projects. When this is the case and the police department is the primary investigative agency, the project should have immediate access to the victims' names and permanent or temporary addresses.

More often than not, however, if a victim is to receive assistance at this stage of the proceeding, it will be provided by a private or community-based project which may include crime victims among its varied clientele or be crime victim-specific. Whatever the agency, it is important that its counselors be trained to be sensitive to special needs of arson victims.

In certain instances - for example, when the investigative agency has provided the victim at the crime scene with the name and address of the assistance agency - the victim may initiate the contact. However, unless the victim immediately contacts the victim service agency, the agency should assume the responsibility for initiating contact with the victim since:

- many victims (e.g., those not at the scene of the crime) may not be aware of the existence of the agency;
- the victim may not be aware that the fire was the result of a crime, thereby making him or her eligible for assistance from crime victim assistance projects; and
- the victim may be intimidated or be wary of initiating a contact which may result in an unwanted involvement with the criminal justice system.

It is important, therefore, for private and community-based assistance projects to keep a close watch on the police and fire department blotters for cases of possible arson.



THE ARREST AND PRETRIAL STAGES

Law enforcement agencies “clear” an offense when at least one person is arrested, charged with the commission of the offense, and turned over to the court for prosecution or when the offender is identified but for exceptional reasons (e.g., death) cannot be charged and prosecuted. In 1995, nearly a quarter of residential arsons were cleared, compared to 18% of all arsons, 18% of the serious property crimes and 45% of violent crimes!’

Although in theory, civil remedies are available once an (alleged) arsonist is identified, practically speaking, an uninsured arson victim has little hope of any compensation for property damage unless an arrest is made. (While this is true for most other property crime victims as well, the fact that the crime damaged or destroyed the property rather than removed it from the owner’s possession precludes even the remote possibility of having it retrieved unharmed as a result, for example, of a police raid on a fencing operation.) Moreover, only an arrest may ease the fear of an arson victim who knows or suspects he or she was the target of the arson. Therefore, retribution and justice sentiments aside, arson victims often have very real and legitimate interests in arrests and notification about such arrests.

Investigative Agency

Immediately upon making an arrest, the primary investigative agency (fire department or police department) should inform the victim. It should also provide the victim with the name and telephone number of a contact in the prosecutor’s office whom the victim may call to provide or request additional information.

At the same time, the investigative agency should turn over to the prosecutor’s office the names, addresses and other information about the arson victims which it has collected. Information about non-witness victims as well as victim/witnesses should be included.

Prosecutor

The prosecutor is responsible for deciding whether to dismiss the case, charge a suspect or seek an indictment, or negotiate a guilty plea to a reduced charge. No amount of victim loss can justify prosecuting a case where there is insufficient evidence to do so. However, victims - including non-witness victims - may be able to provide information relevant to the prosecutor’s decision as to how to proceed,¹⁷ and it is in the prosecutor’s best interests to give victims the opportunity to relay it.

Even when victims have nothing of evidentiary value to contribute, information about their losses is relevant to pretrial negotiations with defense counsel concerning either charging or sentencing negotiations.

Reducing pretrial intimidation of victims is largely the prosecutor's responsibility.¹⁸ Prosecutors may request court orders requiring defendants to maintain specified geographical distances from victims or to refrain from communicating with them. Prosecutors may also seek additional law enforcement protection for intimidated victims. And, of course, when intimidation attempts are made, the prosecutor should, if possible, bring substantive charges. Anti-stalking laws passed by most states in the past few years may also be used against those who attempt to intimidate victims by repeatedly following or harassing them.

Victim/Witness Programs

At the urging of the National District Attorneys Association, many local prosecutors offices began establishing victim /witness programs in the mid-1970's. The programs were established to assist victims and witnesses in coping with the demands of the criminal justice system. As previously mentioned, victims who come to the attention of these projects are primarily victims of cases in which an arrest has already been made.

Among the services offered by victim /witness assistance projects are:

- ongoing case status information;
- mail subpoena systems;
- subpoena on-call alert and subpoena recall (call-off);
- expedited property return;
- court support services;
- assistance with victim compensation applications;
- assistance with presenting restitution and victim impact information to the court; and
- information about protection against intimidation.

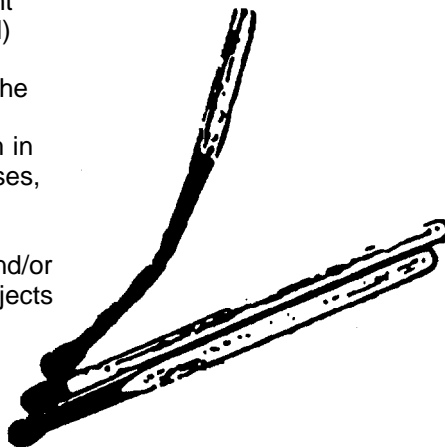
Because of the nature of the crime of arson, some of these programs are of special importance to arson victims; others may have to be tailored to meet their needs. For instance, a telephone call-in system whereby the victim may initiate a call to find out when and where he or she must appear may be extremely valuable to a dislocated victim. A mail subpoena system, on the other hand, may have little or no value for an arson victim with no fixed mailing address. An expedited return of unharmed property may similarly have little immediate value for an arson victim who has no place to store his few remaining possessions; in this instance, the victim/witness program may better assist by referring victims to storage facilities in the area.

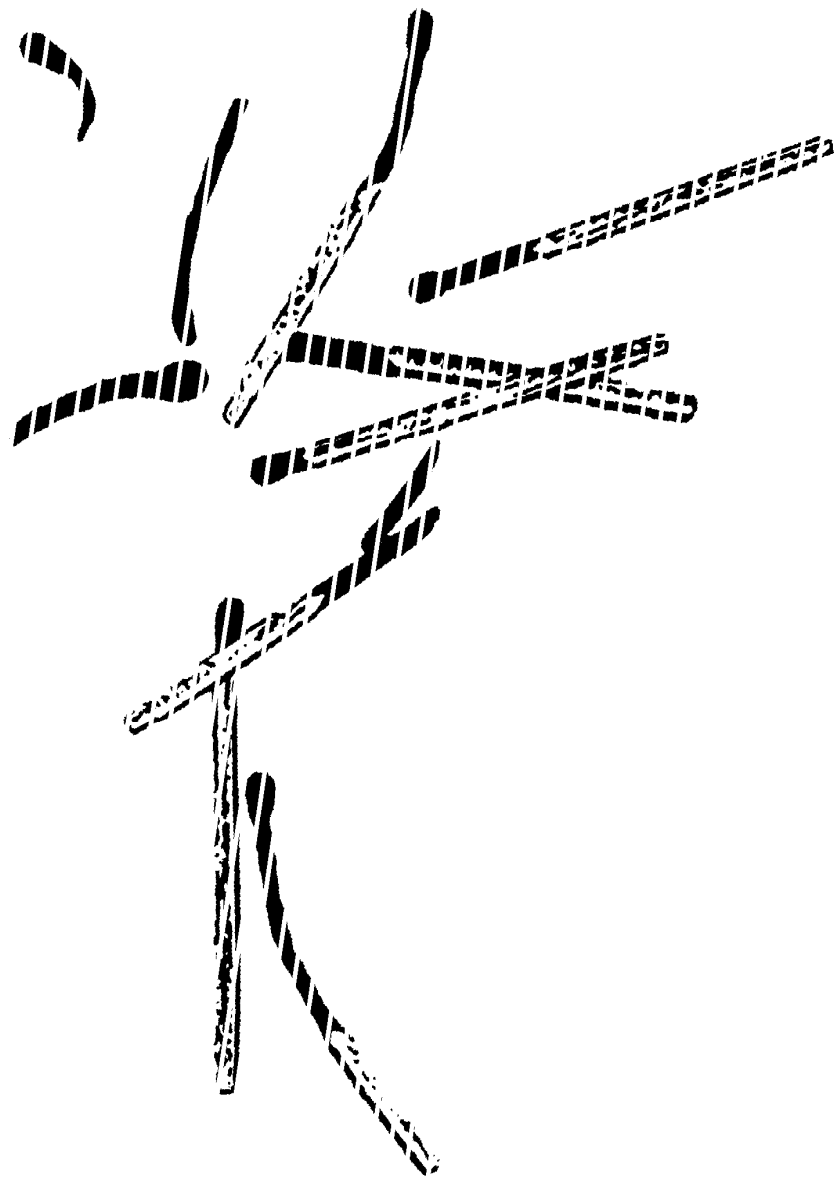
Assisting victims in completing victim compensation forms and acting as an intermediary between the victim and the victim compensation agency are legitimate functions of a victim/witness assistance program.

As an arm of the people's legal representative, the prosecutor-based victim/witness assistance program might also advise the victim of possible civil remedies that might be pursued now that an (alleged) offender has been identified and arrested. Differences between the civil and criminal systems, the limitations of the criminal system in helping victims recover their losses, and the initial steps to take in exploring the possibility of a civil action against the perpetrator and/or third parties are all possible subjects of discussion.

While, generally, victim /witness assistance programs may know how to locate their clients, residential arson victims may find it necessary to move frequently, from one temporary address to another. The program should therefore make a special effort each time it is in contact with the victim to confirm or change the victim's address and telephone number for its records, and to update names, addresses and phone numbers of family members and friends who are in frequent touch with the victim.

While any victim can "disappear" before providing impact information to the prosecutor or court, arson victims may unintentionally fail to be accessible for this purpose more often than other victims. Consequently, victim/witness programs might encourage them to prepare victim impact statements early in the process. In this way, should the system lose track of their whereabouts, it would still have some information for consideration during later decision-making. When victims do remain in contact, their victim impact statements can be updated if warranted.





THE TRIAL

As other victims, arson victims are likely to have a considerable interest in the trial; nevertheless, unless they are witnesses for the state, they have no role to play at this stage, regardless of the losses they have suffered. Losses which were relevant to the charge being brought and which will be relevant to the sentence which might ultimately be handed down are not relevant to the question of the defendant's guilt or innocence.

Victims who testify as witnesses should, of course, continue to be accorded all of the courtesies and considerations that they have received during the pretrial stage, either by the prosecutor's victim/witness assistance program or by an independent assistance agency. Victims who have not been sequestered as witnesses in the case have the right to attend the trial, and should be informed in advance of the date, time, and place where it will occur. If court dates change, those victims who have requested notification and have provided the appropriate authority with a current address or phone number should receive timely notice of the revised schedule so that they do not make unnecessary trips to court or miss court proceedings they wish to attend. They should also be informed if a guilty plea is contemplated so they may have the opportunity to confer with the prosecutor about the plea negotiation. After a trial they have not attended or the entering of a guilty plea, they should be notified of its outcome.

SENTENCING

Whether or not victims have participated as witnesses in the trial or pretrial stages, their concerns, losses and needs should be a factor in the sentencing decision. This stage is particularly crucial for uninsured arson victims as the potential for restitution may be their only hope of obtaining even partial relief for property damage.

Following the recommendations of several national task forces, the American Bar Association, and other groups, all states have enacted legislation allowing victim impact information at sentencing.¹⁹

The court should not treat the victim's participation at this stage an unwelcome intrusion on judicial authority, but rather as an opportunity to ensure that the justice imposed is fair to the victim and society as well as to the defendant²⁰

Prosecutor

While, as noted above, all states now allow victim impact information at sentencing, not all jurisdictions have formal procedures for doing so. Where this is the case, the victim must often rely on the individual prosecutor to convey this information to the court informally.

The prosecutor must be mindful that at the sentencing stage, not only victim /witnesses but also non-witness victims should be consulted. These include the family members or representatives of deceased or incapacitated victims. The fact that a victim has not been able to provide information useful in investigating and prosecuting the crime should in no way limit his right (or his family's right) to consideration in the sentencing process.

In addition to assisting in the presentation of the "facts" to the court, the prosecutor can recommend restitution and other "alternative" sentences which might benefit the victim. These should be discussed with the victim in advance in the event there are legitimate victim objections which the prosecutor might not foresee (for example, requiring community service at a facility the victim frequents). Prosecutorial recommendations may also take into account the community welfare which may be of special importance in arson cases where there have been multiple outbreaks in certain geographical areas.

After a sentence has been imposed, the prosecutor or the victim/witness assistance program should inform the victim about it and discuss the implications that the sentence might have for the victim personally. If restitution has been ordered, the process by which the victim is to receive payment and available remedies if the defendant defaults should be explained.

Probation/Parole

Whether or not it is their sole means of providing victim impact information to the sentencing court, most states provide for such information to be included in the probation department's written pre-sentence investigation report that also contains information about the defendant which is considered relevant to the sentence. Again, the provision of such information is not limited to those victims who have served as witnesses. The probation officer must be aware that he or she may have to look beyond the list of witnesses provided by the prosecutor's office to ensure that the report is complete. In arson cases in which there are multiple victims scattered away from the site of the crime, this may prove difficult and time-consuming; it will, however, be simplified considerably if adequate tracking records have been maintained throughout the case.

Judiciary

No matter how well arson victims have been treated in previous stages of the case, it is the sentencing body (generally a judge, sometimes a jury) which will leave them with a lasting impression of the criminal justice system. Studies have shown that most victims do not want or expect unduly harsh punishments for those who have harmed them;²¹ they do, however, expect some personal consideration.

The sentencing court has the ability and the obligation to consider:

- the crime itself,
- the offender who has been convicted,
- the victim of the illegal act, and
- the needs of society as a whole.

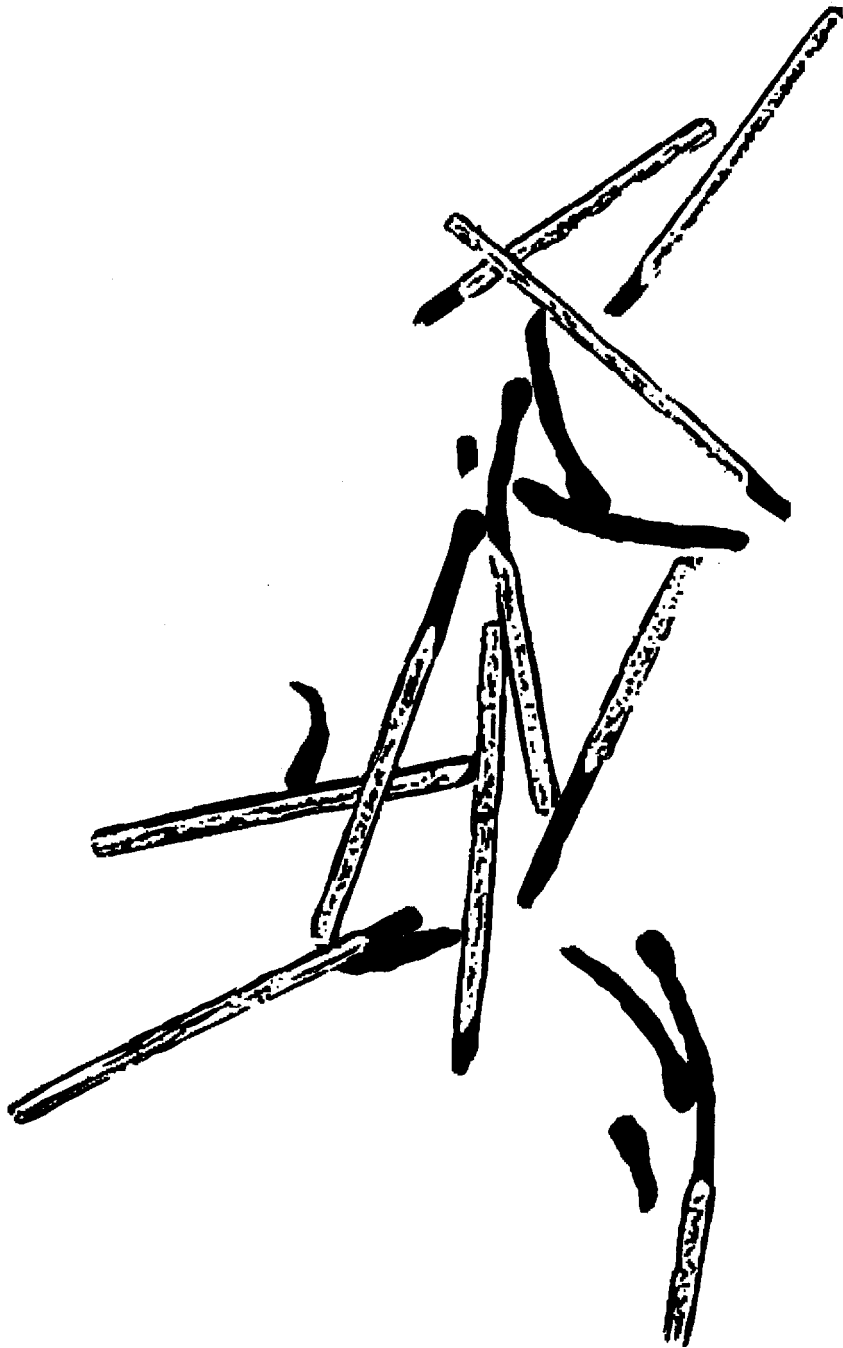
Too often, the victim ranks a poor, if not non-existent, fourth in that consideration.

Restitution is the obvious and probably most relevant sentencing disposition that the court can impose directly to benefit an arson victim. The fact that complete restitution is not feasible should not in itself inhibit the court from requiring at least partial restitution.

Sometimes the court may be faced with a difficult decision as to an equitable allotment of restitution in arson cases. For example, in the case of a multi-family dwelling, both the structure and the contents of the individual apartments in the structure may have been damaged or destroyed. Dividing what may well be a small amount between the owner(s) and the tenants is likely to be an extremely frustrating and unrewarding experience for the court; worse, it could appear to the individual victim as a mockery of justice. In such cases, the court should be encouraged to use its imagination. If restitution to individuals is not feasible, perhaps financial or in-kind restitution to a community program may be appropriate - for example, the burn unit of a local hospital or the volunteer fire department.

CORRECTIONS

As other victims, arson victims often have an interest in knowing when the individual responsible for their victimization is released or escapes from a correctional facility. They may also want to provide information relevant to a parole hearing. Accordingly, correctional officials should make every attempt to provide timely notice of any anticipated release as well as any escape from custody to victims who ask for such notice and provide current telephone numbers and addresses for this purpose.



POLICY REVIEW

Most of the problems in the handling of arson victims are not the result of deliberate attempts to exclude these victims from the system, but rather are the result of failing to take a focused look at the system's handling of such victims. Moreover, no single component of the system or branch of government has been either immune to the problem or especially deficient; nevertheless, all need to review their policies to evaluate what, if any, changes might be warranted.

Legislature

Among the issues to be reexamined by the legislative branch are the following:

- adequate funding and eligibility requirements of victim assistance programs;
- adequate funding, coverage and eligibility requirements of compensation programs; and
- restitution provisions of penalty laws, including the opportunity of victims to inform the sentencing body of their financial losses.

While many new programs and laws have greatly contributed to recent gains for crime victims, they are not always applicable to arson victims. The exclusion of victims who are not witnesses from victim /witness assistance programs and failure to compensate for property loss are two examples.

Executive Branch

The executive branch of government also needs to reassess the various victim programs that it administers to ascertain if they are meeting the needs of arson victims. In addition, enforcement and prosecution policies should be examined to determine if arson cases are receiving their fair share of resources and whether representatives of its agencies are working together with the victims of arson. The feasibility of crisis response units to meet the immediate needs of arson (and other) victims should be considered. Whenever possible, case-by-case decision-making ought to be reinforced by the knowledge of the impact of the crime on the victim and on the community as a whole.

Judicial Branch

Finally, the judicial branch of government should consider whether it has been sufficiently conscientious in giving appropriate consideration to the impact of arson on victims and the community, in encouraging attorneys for the people to solicit and present the views of victims, and in confronting arsonists with the human costs of their crime.

The tremendous cost of arson - in lives, injuries and dollars - mandates that all involved take a second and indeed a third look at what they can do to assist the victims of this serious crime.

Endnotes

1. *Crime in the United States 1995*, U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports, released October 13, 1996, p. 54. Only fires determined through investigation to have been willfully or maliciously set are included in the 94,926 number; fires of suspicious or unknown origins are excluded.
2. Ibid.
3. 1990-1994 National Fire Incident Reporting System (NFIRS) and National Fire Protection Association (NFPA) Survey, from charts on "Major Causes of 1990-1994 Structure Fires" and "Major Causes of 1990-1994 Residential Structure Fires," updated 10/96 and 7/96 respectively.
4. Ibid. Figures based on average annual figures for 1990-1994.
5. Ibid., p. 55.
6. See: "What Sets Off an Arsonist?", *Security Management*, Vol. 37, No. 1 (January 1993) p. 42-47.
7. *Crime in the United States 1995*, p. 55.
8. Ibid.
9. An exception is Louisiana which authorizes up to \$10,000 for "loss of an abode by arson." La. Rev. Stat. Ann. §1802-1810 (West 1996).
10. *Crime in the United States 1995*, p. 55.
11. Ala. Code §6-5-380 (1996).
12. 23 Pa. Cons. Stat. Ann. §5505 (1996).
13. Ariz. Rev. Stat. Ann. §12-661 (1997).
14. Md. Ann. Code art. 27, §808 (1996).
15. N.J. Stat. Ann. §2a:53a-15 (1996).
16. *Crime in the United States 1995*, p. 55 for residential and all arson clearances: p. 199 for violent crime and property crime clearances.
17. *Criminal Justice Prosecution Function Standards*, American Bar Association, Third Edition, approved by the ABA House of Delegates in February 1992.: Standard 3-3.2(h): "Where practical, the prosecutor should seek to insure that victims of serious crimes or their representatives are given an opportunity to consult with and to provide information to the prosecutor prior to the decision whether or not to prosecute, to pursue a disposition by plea, or to dismiss the charges."
18. In August 1980, the American Bar Association's policymaking House of Delegates approved a package of recommendations to reduce victim/witness intimidation. Included was a model statute which served as the basis for legislation in a number of states.
19. See *Attorney General's Task Force on Violent Crime: Final Report*, U.S. Department of Justice, August, 1981, and *President's Task Force on Victims of Crime: Final Report*, December 1982, ABA *Guidelines for Fair Treatment of Crime Victims and Witnesses*, approved August 1983. Most states provide several ways for victim impact information to be brought to the court. These include a separate written "victim impact statement" prepared by the victim, oral allocution by the victim at sentencing, or inclusion of victim impact information in the presentence report prepared by the probation department.
20. See *Guidelines for Fair Treatment of Crime Victims and Witnesses*, approved by the American Bar Association, August 1983, the *Criminal Justice Prosecution Function Standards*, approved by the American Bar Association, February 1992, and *Criminal Justice Sentencing Standards*, approved by the American Bar Association, February 1993.
21. See e.g., "Victims Reactions to the Criminal Justice Response," prepared by Deborah P. Kelly for delivery at the 1982 Annual Meeting of the Law and Society Association.

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